

### Risky strategies? Putin's federal reforms and the accommodation of difference in Russia

Cashback, David

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**Risky Strategies? Putin's Federal Reforms  
and the Accommodation of Difference in Russia**

DAVID CASHABACK

*London School of Economics  
and Political Science, UK*

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# **Risky Strategies? Putin's Federal Reforms and the Accommodation of Difference in Russia<sup>\*</sup>**

DAVID CASHABACK

*London School of Economics and Political Science, UK*

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*This article examines Vladimir Putin's reforms to Russia's federal system since 2000. The initial rationale for the reforms was the need to strengthen the capacity of the central government after Boris Yeltsin had engaged in a controversial practice of negotiated federalism, granting federal units autonomy and asymmetrical rights and powers. This article considers the legacy of the Yeltsin administration and shows that some aspects of these reforms were indeed necessary in order to enforce federal law, the constitution and make inter-budgetary relations more stable. Nevertheless, by focusing attention on two recent reforms passed in 2003 – on regional government and local self-government – the author argues that Putin's vision of federalism overlooks some crucial aspects underpinning Russia's federal system, namely the existence of ethno-national minorities and the benefits of negotiated autonomy arrangements as a way of accommodating minority nationalism.*

## **I. Introduction**

Debates about the nature of Russian federalism are ongoing. In the early 1990s, the Russian leadership elected not to break with Soviet legacy but rather maintain the ethno-territorial hierarchies that had hitherto been a hallmark of Soviet federalism. As a consequence, a tension remains between these ethno-territorial republics and the 1993 constitution, which equalized all of Russia's constituent units, as well as with the bilateral power-sharing treaties and agreements which were subsequently concluded between the federal and regional governments. As Boris Yeltsin's presidency drew to a close at the end of 1999, the sustainability of Russia's system of negotiated and asymmetrical federalism raised a number of fundamental questions: do such practices create or hinder governance capacity or is federalism a chimera in Russia? With the accession of Vladimir Putin to Russia's presidency in 2000, the question of sustainability was tackled head-on. The autonomies which Boris Yeltsin established were widely considered to lead to state collapse. Consequently, the new administration's priority would be to undo this legacy and restore stability to federative relations.

This article examines the shifts and vicissitudes of the debate on federalization since 2000. It considers various developments in Russian federalism, including Putin's reform strategy, institutional and legal decisions and emerging legislation in an attempt

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to identify how federalism is articulated under the current administration. Reform *per se* is nevertheless not a risky proposal. Changes were overdue to strengthen governance capacity; diminishing the influence of regional leaders over federal bureaucrats located in the regions; establishing more coherence in inter-budgetary relations, and sanctioning regions which flouted the constitution or federal laws. This article argues that it is possible to identify three axioms underlying Putin's conception of federalism as articulated in his rhetoric and programme of reform, namely: the equality of citizens, symmetry of governments, and a rigid division of powers and competences among levels of authority. Arguing that federalism needs to set out a precise division of powers and framework of accountability, Putin's reforms have consequently set out to strengthen the power vertical and give the centre the upper hand in its relations with federal subunits.

Nevertheless, it is argued here that Putin's reform programme overlooks crucial characteristics of Russia's federal system. First, it neglects the interdependence which can and does exist in federal systems. Second, it minimizes the importance of intra-governmental representation of regional interests within the institutions of the federal government. Third, and arguably most significantly, it overlooks the initial conditions which led Yeltsin to practise negotiated federalism. At the outset, negotiated federalism was a means to recognize ethno-national difference and quell a constitutional crisis of legitimacy. Since 2000, the federal government has articulated centre-regional relations as a question of jurisdiction instead of recognition, thus overlooking the fact that there remains a degree of disagreement about the nature of the constitutional bargain in Russia, and that autonomy arrangements provided the leadership with a degree of flexibility to facilitate the management of these disagreements. Putin's reforms may well indicate that federative relations have evolved, and that these forms of autonomy, and the flexibility they afford, are no longer required. However, in Tatarstan, Chechnya and other republics, evidence suggests that the centre's initiatives to rollback negotiated federalism and reassert a power vertical are examples of continuing divergences about the nature of the Russian state.

The article begins with an overview of the practice of federalism under Yeltsin, and an examination of the autonomy arrangements which were the hallmarks of his presidency. It then considers the rhetoric of change under Putin, as articulated against the backdrop of federal practice in the 1990s, and how this rhetoric is turned into concrete reform initiatives, building on existing analyses of the reforms undertaken in

2000. It considers two recent reform initiatives in more detail: a law on the organization of regional government, and one on local self-government, both of which emerged from the work of a Presidential Commission on the division of powers. It is argued throughout that Vladimir Putin's reforms can be analysed as yielding a specific model of federalism and of federal-regional relations. The final section subsequently considers to what extent this model of federalism and its break with the practice prevalent during the 1990s constitutes a new way of managing diversity and autonomy in the Russian Federation, and whether it should be analysed as a risky strategy.

## **II. The Yeltsin Years and Federal Fragmentation**

Looking back to the early 1990s, it can be seen that there was a lack of agreement on the form and content of the Russian state. An important facet of these debates was the question whether post-Soviet Russia should keep or abandon ethno-federalism as a principle of territorial organization (Jackson and Lynn 2002; Lynn and Novikov 1997). In the various political struggles of the time, the status quo prevailed and was consolidated with the signing of the Federal Treaty in 1992 (Strashun 1996). This was the first of several attempts by the federal centre to codify how power was to be shared between Moscow and the constituent units, and maintained a differentiation in the status between republics and other constituent units. Yet it did not put a stop to federation-building.

In the various constitutional negotiations during 1993, the question of the republics' ultimate status, and the place the Federal Treaty should occupy in the new constitution were constant obstacles. The leaders of Russia's republics objected to the president's draft as it challenged the notion that republics were sovereign states. The competing draft constitution of the Supreme Soviet instead sought to do away with differentiated status for ethno-territorial units. The debate quickly polarized between those in favour of a more 'unitary' state structure and those advancing a confederal arrangement. For their part, Russia's (non-ethnic) regions objected to second-rate status and unilaterally claimed republic status (the creation of a Ural Republic by Sverdlovsk governor Eduard Rossel being the most prominent example of this). With the crushing defeat of his parliamentary foes and suspension of the Constitutional Court, Yeltsin could finalize his constitution-making from a position of strength. The result was a constitution which represented a significant shift in the architecture of Russia's federal

institutions, *inter alia* by equalizing all subjects of the federation (Art. 5). The basic law was, however, not approved by the population in seven republics, most notably in Chechnya where no referendum was held, and Tatarstan where the turnout was too low.

To quell the constitutional legitimacy crisis, the federal government engaged in bilateral negotiations with the recalcitrant entities. The first bilateral treaty was signed with Tatarstan in February 1994, granting it significant autonomy in the fields of economic development and culture (Guboglo 1997: 416-38). While treaties with other republics such as Bashkortostan and Sakha followed, efforts to reach one with Chechnya did not avert bloodshed. In his Annual Address in 1995, Yeltsin spoke of the decision to sign such agreements in a positive light, pointing out that these treaties helped regulate the centre's relations with subjects of the federation. The problem of sovereignty in Russia, he continued, was strongly linked to its federalization, which would be the surest way to maintain the territorial integrity of the state (Yeltsin 1995). Although this practice of "emergency political first aid" (Yeltsin 1997) was subsequently extended to close to fifty federal subjects, the initial treaties reached with the republics provided greater autonomy than the latter treaties, which tended to be more cosmetic, only reaffirming the existing constitutional division of powers (Hughes 2001b; Ivanov 1997: 49-50).

Asymmetry in Russia's arrangements with its constituent units is the hallmark of Yeltsin's practice of federalism, where autonomy was granted in response to disagreements on the nature of Russia's federal system. Some analysts (Hughes 2001b; Smith 1998) have consequently pointed to the benefits of negotiated federalism, showing how it fostered governance mechanisms and patterns of federal-regional interaction to minimize secessionist pressures – Tatarstan being the most prominent example here. However, this has not been the standard interpretation. In many republics and regions, the consequence of devolution has been an increase in legal and legislative dissonance, unimplemented court judgements, and the growth of severe inequalities. It is in this sense that much of the academic and political commentary tends to underline the dangers of Yeltsin's asymmetrical federalism: it weakens *Bundestreue* (Kahn 2002), creates a "dangerous precedent" (Stoner-Weiss 1997) which fails to promote respect for the central government (Sergei Valentei quoted in Smith 1998: 1398), circumvents Russia's constitution, weakens institutions and democracy (Sakwa 2002), and thus fragments the legal space in Russia. The arguments against

Yeltsin's autonomy arrangements tend not to engage with the basic principles behind the institutional choices, but against what has emerged in practice, that is, what leaders did with their autonomy.

### **III. Putin and the Rationale for Reform**

Putin has shown a keen awareness of the abuses of power that resulted from negotiated federalism. For Kahn, "Putin's reforms were, more than anything else, a reaction to Yeltsin's federal legacy of weak institutions and lack of consensus on basic questions of sovereignty and inter-governmental relations in a federal state" (Kahn 2002: 277). This interpretation is emblematic of much of the analysis of Putin's federal reforms: upon acquiring power in 2000, he set out to re-establish a 'balance' in the federal system, restore a power vertical, thus rolling back the asymmetry which had come to characterize the system and attempting to redefine the basis of federal-regional relations.

Vladimir Putin's annual addresses to the Federal Assembly provide a good road-map to the political leadership's intentions. The first address, given in July 2000, unveiled the strategic direction and objectives of the reform programme. (The now famous formula, 'dictatorship of the law', was first used in this speech.) Putin voiced much concern on the question of the effectiveness of the state: indecision and weakness of state structures reduced policy and governance capacity. Regional autonomy was seen to have taken the upper hand: a situation where "centrifugal forces had gained such momentum that they were threatening [to destroy] the state itself" (in Radio Free Europe/Radio Liberty, cited hereinafter as RFE/RL 2002b). The time had come to bridge the various regional "islets of power" and reassert central power (Putin 2000). The reforms which would be introduced that year – analysed below – sought to strengthen the power vertical and staunch the flow of power toward the regions.

The 2001 Address announced the creation of a commission headed by Presidential Administration Deputy Head Dmitrii Kozak to examine the division of powers between the levels of government and establish a more clear-cut division of competences and powers, to be set by federal law, "to precisely determine where the powers of the federal bodies should be and where the powers of the subjects of the Federation [should be]." Similarly, Putin introduced changes to Russia's system of inter-budgetary

relations, an indication of the political interest in rationalizing Russia's system of fiscal federalism: "The clear-cut distribution of resources and tax payments is a matter of the responsibility and effective implementation of mutual obligations by various levels of government" (Putin 2001). The emphasis here is on the creation of mechanisms to promote control and accountability of policy and funding commitments.

In the president's 2002 Address, stable inter-budgetary relations and delineation of policy responsibilities were again significant themes. Importantly, this speech touched directly on the treaty process. Although he describes the process as having been legitimate and having responded to the political exigencies of the early 1990s, Putin concludes that the practice of these agreements led to an inequality in relations between the constituent parts of the federation, thus by extension, between the citizens of various territories. As a result, 28 of 42 treaties were annulled. Moreover, Putin objects to the way in which bilateral treaty-making was practised under Yeltsin: "behind the backs of constituent units of the Federation" and "without any preliminary discussion and the securing of a public consensus" (Putin 2002). Although Putin does not necessarily condemn the practice *per se*, saying they may have been necessary to take regional specificities into account, he is not faced with the same political pressures as Yeltsin: in 2002, the problem is not so much containing nationalism or separatism, but enforcing the division of powers. The argument at this point is consequently more about enhancing state capacity and re-establishing a power vertical than preserving the autonomy of federal subjects.

#### **IV. Implementation of Federal Reforms**

Discussions about the need for reform to strengthen state capacity and reassert the authority of the constitution had been ongoing since 1996, when Putin was appointed head of the Main Control Department, and was charged with overseeing the relationships between the centre and regions (Smirnyagin 2001). At the time, proposals were made to change the composition of the Federation Council, inter-budgetary relations and the delineation of competences. Audits of regional finances subsequently became Putin's preferred tool to expose regional abuse of funds and promote increased accountability. In addition, Boris Yeltsin signed a decree to regulate the treaty process in 1996 (No. 370, *Sobranie zakonodatel'stva Rossiiskoi Federatsii*: n.12 at 1058) and in 1999 a law on the division of competences between bodies of state power was



enacted (*Sobranie zakonodatel'stva*: n.42 at 5005) to reaffirm the supremacy of federal law and the inviolability of articles 71 and 72 of the federal constitution (on the division of powers between federal and regional levels). Whereas under Yeltsin these efforts to change the federal system remained either under-implemented or ignored, Putin followed up on his promises for change and implemented concrete reforms from the very start of his term.

### *Federal Districts and Presidential Representatives*

Putin's opening salvo for reform came in the form of a decree restructuring the presidential administration (Decree 849, *Sobranie zakonodatel'stva*: n.20 at 2112, 2000). It abolished the post of presidential representative in each of the federation's subjects and reorganized the federation into seven umbrella administrative regions, following the boundaries of existing military districts, headed by an appointed plenipotentiary representative subordinate to the president.<sup>1</sup> For Putin, the territorial aggregation of this monitoring function was not a federal or constitutional but "managerial reform", and as such, proceeding by decree rather than through constitutional change was considered legitimate and appropriate (in RFE/RL 2002c). The decree set out three tasks: to monitor the regions' conformity to federal law and the constitution; to coordinate the activities of federal-level officials in the regions; and to analyse and report on the effectiveness of local law enforcement agencies. In essence, this reform programme sought to implement the 'dictatorship of the law', providing the centre with more effective monitoring capacity than Yeltsin's representatives had provided with the aim of ensuring the creation of a unified legal space. A subsequent decree subordinated the presidential representatives to the head of the Presidential Administration (Decree 97, *Sobranie zakonodatel'stva*: n.6 at 551, 2001).

Assessments of this reform are mixed. The consolidation of the centre's monitoring ability was supposed to make the institution of the presidential representative more effective. The system under Yeltsin had been seen as unwieldy because of the large number of representatives and their lack of resources – practically each federation subject had its envoy, who often depended on the regional government for resources.

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<sup>1</sup> The institution of presidential representative was not new to Putin. Indeed, Yeltsin appointed a representative to each of the federation subjects to monitor and report back to the centre as early as 1991.

Putin's change sought to remove the influence of regional leaders on the activities of the representatives, but also on the activities of federal officials and ministries. Commentators have pointed to the transitory nature of the representative (a "crisis institution"), which has no clearly stated responsibilities, political power base, and little public support (Lysenko 2002; Perovic 2002; Ryklin 2002). In April 2003, the president verbally expanded the powers of his seven envoys, charging them to monitor the implementation of the federal electoral law, land reform, and significantly, granted them a greater deal of oversight of federal transfers to the regions (Ofitova 2003). But no decree or order has yet officialized these new responsibilities (RFE/RL 2003b). The scope of the so-called 'managerial reform' seems to be increasing.

Because of the military background of most of the envoys, fears had been voiced about risks of militarization of the presidential districts (Isakova 2001) or of presidential representatives gaining control over regional budgets. But in reality the assessment of the work of the presidential representatives has varied. Effectiveness has rested on each envoy's personality and particular interests (EWI 2002c; Mikheev 2002). The heads of Russia's more powerful regions still take their concerns directly to the president. Moreover, the institution, which was created purportedly to promote a unified legal space and more accountability, is itself relatively insulated from the public. Representatives' reports go directly to the president and the head of the Presidential Administration. It is impossible to demand a report of their activities and according to Sergei Kocherov, "it is difficult to judge how profitable their work is for the region, for example, in terms of attracting investment or support for small or medium-sized businesses, because we do not see any kind of practical results of their activities" (in RFE/RL 2002d).

### *Changes to the Federation Council*

Soon after this first reform, a law was enacted in July 2000 to modify the composition of the Federation Council (FC) (*Sobranie zakonodatel'stva*: n.32 at 3336). Since 1995, leaders of the legislative and executive branches of the subjects had been appointed *ex officio*. Putin, continuing his crackdown on regional abuses of funds, sought to remove the rights of regional leaders to sit in the upper chamber, and by the same token from the levers of power and influence in Moscow. The law directs the legislative and executive branches of regional government to each select a representative. Commentators have remarked that the *ex officio* system produced a relatively

compliant upper chamber at the time when regional leaders were presidential appointees, but that this compliance could not be taken for granted once elections for regional heads were introduced in 1996 (Hyde 2001). Furthermore, as it was composed of regional leaders that met only a few days a month, the FC was not necessarily the most effective law-making body. Nevertheless, despite fears that filling the chamber with full-time professional legislators might create a more unruly forum, this was a risk Putin announced he was ready to take.

The measure was strongly opposed by regional leaders and was vetoed by the FC before being sent to a conciliation commission. Some changes from the initial legislative draft were approved, in part to mollify the opposition of regional leaders. Notably, governors obtained the right to keep their seats until their own terms expired. Furthermore, the term of incoming FC representatives was to be the same as that of the body which appointed them (Huskey 2001; Hyde 2001). In addition, Putin created a new institution, the State Council, where the leaders of all 89 subjects meet on a quarterly basis, and a presidium composed of the president and seven regional leaders, one per district, appointed for a six-month term (*Sobranie zakonodatel'stva*: n.36 at 3633, 2000). Although the body is consultative, its aim is to promote the participation of regional leaders in the “preparation and passing of important national decisions” (Putin 2000).

Even though the effectiveness of the reformed FC has been questioned, there is little evidence that a professional chamber has been more obstructive. Putin's legislative output does not seem to have suffered. A number of regional leaders objected to losing their role at the federal level. Like many regional leaders, Chuvash President Nikolai Fedorov believed they would “be deprived of the capability to influence and have any effect on this policy in the country's constitutional bodies” (Tropkina 2000), thus losing a valuable outlet for the airing of regional grievances at the centre. In any event, the way in which posts on the Federation Council have been filled calls into question whether leaders see the body as a place where regional interests can be aggregated and represented at the centre: as Gel'man points out, about 35 per cent of the members of the FC have no connection to the region they represent, and are either Muscovites and/or representatives of big business (EWI 2002c; Gel'man 2002).

### *Federal Intervention*

Putin's reforms in the area of federal intervention (powers of disallowance and reservation) sought to combat the problem of 'separatism in the legal sphere'. By 2000, the Prosecutor General reported that 70 per cent of regional legislative acts deviated from federal legislation, and 34 per cent contradicted the federal constitution (Hyde 2001). According to the Russian Ministry of Justice, 18 of 21 republican constitutions, and a third of 16,000 laws it examined contradicted federal law (Hughes 2001b:65n20; Kahn 2002). The separatism in the legal sphere was seen to emanate from the practice of treaty-based federalism in the 1990s. But bilateral treaties alone cannot be blamed for the full extent of separatism in the legal sphere. First, many of the laws that were in violation were declaratory and had little real effect on the workings of the system (Ortting and Reddaway 2003). Second, legal dissonance is a function of the complex system of shared jurisdiction (Article 76 §4 of the Russian Constitution). In areas of joint jurisdiction, if no federal law is in place, there can be 89 different approaches to an area of law. Regions had the ability to gain regulatory competence at the expense of the federal level, thus shifting the balance of power in their favour (Hønneland and Blakkisrud 2001: 42). As the Russian parliament started to enact legislation in areas of joint jurisdiction, dissonance was bound to result.

The right to federal intervention is based on several articles of the 1993 Constitution which designate the president guarantor of the federal Constitution (Art. 80 §2), grant him the right to suspend legislative acts which contradict federal law or the constitution (Art. 85 §2), and establish that in areas of federal and shared jurisdiction, the bodies of executive power of the federal government and of the subjects of the federation consist of a unified system of executive power (Art. 77 §2) (Kahn 2002). The Putin administration amended the 1999 law on the organization of legislative and executive bodies of state power (cited above) to grant the president the right to dismiss regional leaders or regional parliaments that violate federal law. Although the president has made use of the powers of disallowance, suspending treaties and other normative acts which contradict federal legislation, the power to fire regional leaders has so far gone untested as the courts have added some extra hurdles to the procedure: courts of three jurisdictions, including the Constitutional Court, must concur in the decision to suspend a regional leader or legislature.

A decision of the Constitutional Court in July 2003 further constrained the powers of interference. In a case brought by the republics of Bashkortostan and Tatarstan

challenging the Prosecutor General's right to challenge the constitutionality of regional constitutions or charters, the court found that even if a regional constitution violated federal law, it was not sufficient grounds to declare that document unconstitutional and invalid. Regional constitutions and charters, contrary to laws or normative acts of the subjects of the federation, have a particular relationship with the constitution of the Russian Federation and consequently cannot be considered 'ordinary' legal acts. Whereas before the prosecutor could ask an administrative or civil court to ascertain the constitutionality of a regional constitution, the Constitutional Court ruled that only it can make such an assessment (*Konstitutsionnyi Sud Rossiiskoi Federatsii* 2003).

Kahn has pointed to the problems in Putin's approach to interference and disallowance, showing that it weakens the difference between federal and regional government. The president becomes an arbiter between branches of government. For Kahn, "while the Federal President possessed the power to suspend regional executive acts deemed by him to conflict with the federal Constitution *prior to any judicial determination of that fact*, regional elites did *not* possess a parallel power to suspend federal acts deemed by them to be in conflict with the federal constitution." The law, which Kahn argues should be the main vector of conflict regulation and management in a federation, becomes a "weapon rather than an administrative tool" (Kahn 2002: 249, emphasis in original). Federal theory holds courts and judicial adjudication to be key institutions within federal systems. Although we must keep in mind that legal judgement is by its very nature political, the product of the society and politics in which it occurs (Dworkin 1986), the development of judicial review in Russia's federal system can be a positive development. In this case, judicial adjudication has added procedural checks on the powers of the executive to interfere in regional affairs. If the courts do not become overly politicized, and parties agree to abide by the judgements (which has been the main challenge in Russia so far), judicial review as an institution gains importance, not because it stymies the centre's power vertical or regional autonomy, but because it constrains centre and region in a common procedure to mediate tension over the interpretation and meaning of constitutions and law.

### *Kozak Reforms*

Building on the three reforms examined above, following his 2001 Annual Address, Putin appointed a *Presidential Commission for the Demarcation of Powers between the Federal, Regional and Municipal Levels of Government*, naming a former colleague

from the administration of St Petersburg mayor Anatolii Sobchak and Dmitrii Kozak, deputy head of the Presidential Administration, to direct its work. This Commission would suggest fundamental changes to the system of federative relations in Russia, examining and recommending the annulment of power-sharing treaties and areas where the constitutional division of powers should be strengthened. The Commission's report, *Concept of Federal Reforms* (cited hereinafter as *Komissiya*), was presented to regional leaders in the State Council in Spring 2002, but was reworked in response to their criticism (Tsvetkova and Shishkounova 2002). The *Concept* proposed a mechanism to determine a division of powers between the federal, regional and municipal orders of government and is explicit on the need to determine jurisdictional and funding responsibilities. In areas of joint jurisdiction, the *Concept* suggests that the federal government assume policy-making responsibilities, leaving regional governments to implement (and in some cases wholly fund) policy (*Komissiya* 2002). Two laws have emerged from Kozak's Commission: on regional government passed in July 2003, and on local self-government passed in September 2003.

#### *Law on Regional Government*

The *Amendments to the Federal Law on General Principles of the Organization of Legislative and Executive Bodies of State Power of the Subjects of the Russian Federation* proposes a clear delimitation of federal-regional competencies, and circumscribes the use of treaties.<sup>2</sup> If implemented to the full extent, it promises to be a watershed, especially if the presidential administration and federal government are steadfast in their commitment to eliminate existing bilateral treaties. According to Sergei Samoilov, legal aide to the president, those treaties still in force "would not survive much longer" (RFE/RL 2002a). Following Kozak's concept, "constitutional powers should be transformed into specific powers of specific power structures on specific levels only on the basis of federal legislation", thus rendering moot the practice of negotiated federalism (Gorodetskaya 2002).

Whereas issues of jurisdiction and accountability were left unanswered in Putin's previous reform initiatives, this particular law seeks to re-establish a balance of interests and powers between orders of government, resolve remaining ambiguities and eliminate unfunded mandates. In a nutshell, the law seeks to determine '*Kto, za chto i*

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<sup>2</sup> The law adopted on 4 July 2003, consists of amendments to the 1999 law of the same name (*Sobranie zakonodatel'stva*: n.42 at 5005).

*kak otvechaet v gosudarstve*’ (who answers for what and how in the state) (Kirpichnikov and Bargandzhiya 2001). Ambiguities about each level’s responsibilities and commitments must be resolved so that “power”, according to Kozak, “becomes accountable to its citizens”, who will be in a better position to assess how much tax is paid to whom, for what level of service, and whom to hold accountable for successes or failures (quoted in Tsvetkova 2003).

Article 3 §1 of the law reasserts the supremacy of federal law and of the federal constitution. If a federal law is enacted in an area of joint jurisdiction, regional legislation must be brought into line with the former within three months. The most significant modifications are made in a revamped Part IV. Article 263 §2 enumerates a number of shared jurisdictions for which funding must come from regional budgets (included in this category is a requirement to organize the provision of education (§2.13) and healthcare (§2.21)). Interestingly, the law provides for procedures by which disputes may be addressed: Article 264 §3 declares that upon objection by at least one third of the subjects of a federal law in an area of shared jurisdiction (enumerated in the Article examined above, 263), the State Duma can create a conciliation commission. Furthermore, §4 of the same article creates an obligation for the federal government to send legislation on these matters to regional bodies of executive and legislative power for consideration. At the same time the law extends the power vertical, granting the federal government power to assume temporary financial administration of a regional government’s competence if its budget deficit rises above 30 per cent (Art. 269 §1(b) and §3). Upon petition by the central government to an arbitrage court, it can assume financial control for up to a year.

Significant is Article 267, which enumerates the principles and methods of concluding treaties with federation subjects. The principle of a bilateral treaty with a federation subject is affirmed, but very circumscribed in section 1, following which treaties may be signed with only subjects possessing “economic, geographic or other peculiarities.” The Kozak Commission’s *Concept* failed to mention *ethnic* particularity as a motive too. Ethnicity had been a motive included in the law enacted in 1999 on the division of powers between federal and regional governments, which is superseded by the 2003 law on regional government.<sup>3</sup> Ethnicity, included in the previous version, is

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<sup>3</sup> Article 14 §2: a “Treaty can specify objects of joint jurisdiction taking into consideration political, social, geographical, *ethnic* and other particularities of subjects of the Russian Federation.” *Federal’nyi zakon o printsipakh i poryadke razgranicheniya predmetov vedeniya i polnomochii mezhdu organami*

therefore downgraded in the latest law, which is now the authoritative legislative guide to treaty and agreement-making.

Additional requirements regarding the transparency of the process have been added: section 5 gives other subjects of the federation the right to consult the text of the proposed treaty or agreement and make comments or suggestions. The law requires that the proposed treaty or agreement, once established, does not violate existing law (§3), be approved by the executive and legislative bodies of the subject (§4), be submitted by the president of the federation to the federal Duma (§8). Once passed, the treaty has the weight of a federal law (§9), and is valid for ten years (§10). Article 310 §5 establishes a time frame for all existing bilateral treaties must be brought into compliance with the law within two years.

#### *Law on Local Self-Government*

Whereas the law on bodies of power establishes a clearer delimitation of powers between federal and regional levels of government, the law *On General Principles of Local Self-Government in the Russian Federation*, enacted on 6 October 2003, promotes the economic and political capabilities of *municipal* government. Since existing legislation (enacted in 1995) is seen as being ambiguous on the status of municipal government, this law integrates the municipal level into the hierarchy of bodies of state power even though the constitution formally defines it as being separate from federal or regional levels (RFE/RL 2003c). For Kozak, “In principle the subjects of the Federation and local self-government, in their legal nature and in their status, occupy the same position in their relationship with the federal centre” (Tsvetkova 2003). As with the law discussed previously, the reforms to local self-government seek to reinforce judicial control rather than political control of the municipal government’s responsibilities and funds. These proposals were not uncontroversial, as the law received resistance both in the Duma and in its committees: the Duma Committee on Local Self-Government considered over 6,000 amendments (Malyakin 2003; Melikova 2003).

The law proposes a new institutional framework: municipalities (cities or settlements with a population greater than one hundred persons) and municipal regions.

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*gosudarstvennoi vlasti Rossiiskoi Federatsii i organami gosudarstvennoi vlasti sub”ektov Rossiiskoi Federatsii* (Sobranie zakonodatel’sstva: n.26 at 3176, 1999, emphasis added).



The head of a municipality is an elected official, whereas the mayor of a municipal region is appointed by contract with the region's representative body. The document proceeds to give a detailed breakdown of the competences of each respective level (Part III). The objective is to augment the effectiveness of local government and its governance capacity by aggregating service provision such as health care or education on a regional level. Each level of government is to have clearly defined responsibilities and powers. Since an objective of this reform is to eliminate the problem of unfunded mandates, responsibilities cannot be shifted to a subordinate level without an accompanying budgetary envelope (EWI 2002a).<sup>4</sup> In this case, higher-level governments set policy, while implementation is carried out by lower-level bodies. Furthermore, when a government transfers funds (for instance, from federal to regional, or regional to municipal) for the implementation of a given policy, the donor can monitor the use of funds. Leaders who misuse funds could be temporarily suspended from power.

Municipal-level aggregation of policy-making and delivery capacity is an interesting proposal in the law on local government. But its very verticality brings difficulties with it. Municipalities are not left to decide whether and how to aggregate functions, and whether to delegate functions to higher levels of government. It remains to be seen whether the approach adopted by the federal government (a top-down division of competences and funding responsibilities) is a more workable solution than enacting perhaps looser enabling legislation which affords regions or local level bodies more latitude in determining the level and form of aggregation. The creation of two separate administration and new bureaucratic structures at the local level creates the possibility of policy overlap, and by extension additional implementation challenges.

It is premature to offer an exhaustive assessment of these initiatives, as it remains to be seen how they will be implemented. Nevertheless, taken as a statement of the centre's intentions, the Kozak reforms go further than Putin's previous efforts: the federative reforms of 2000 focused on containing crises and reasserting the power vertical. Kozak's reforms furthermore seek to give content to this vertical by establishing a framework for devising and implementing policy. The changes proposed seek to

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<sup>4</sup> Duma Budget Committee Deputy Chairman Mikhail Zadornov puts the total of unfunded mandates at 300-350 billion rubles, while Labour Minister Aleksandr Pochinok's figure is closer to several trillion rubles a year.

alleviate the ambiguities which increasingly characterized the division of powers. The implementation of the reforms promises to be complicated: some sections of both the laws on regional governments and local self-government will not be implemented before 2006, and are conditional on enacting required changes to an estimated 240 laws, as well as to the tax and budget codes (RFE/RL 2003c). In fact, for the system to work effectively, it requires the existence of a functioning system of inter-budgetary relations and fiscal federalism. According to Dement'ev, one problem is that the central government views the issue of inter-budgetary relations as one that rests with other levels of government. The problem of budget insufficiencies is not seen to exist at the federal level: "all subjects of the federation have equal opportunities to formulate their budgets and equal tax potential" (Dement'ev 2002). But it is unclear what to do with the fact that there are only 18 donor regions in the country and that much of the revenue received by regions comes from transfers. Although the possibility of regional mergers is one solution which has been suggested to attenuate regional fiscal gaps, this fiscal imbalance is likely to be more crippling than a lack of clear division of competences. Moreover, recent changes to the tax code have seen the federal government's share of tax revenue rise, while regions are left with sources of funding which are far less secure (EWI 2002b).<sup>5</sup>

## **V. Risky Strategies? Assessment of Putin's Reforms**

### *The Idiom of Putin's Federalism*

In the campaign leading to his election in March 2000, Putin was portrayed as resolute, a man of action, in stark contrast to the sickly Boris Yeltsin of the late 1990s. In the reforms carried out by Putin, here too the contrast is striking. Yeltsin's efforts to constrain regional leaders and manage the treaty-making process were under-implemented or plainly ignored. In response, Vladimir Putin engaged in a course of reform to reassert the authority of the constitution and federal law – the power vertical – and reign in regional governments. The context in which these changes occurred provides clues for understanding their underlying rationale. Coppieters (2001: 1-9) suggests that analysis of a "political idiom" (in this case, the manner of thinking and

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<sup>5</sup> An example from the Leningrad Oblast': the federal government abolished the road tax, which went into regional coffers in exchange for an additional 1.5 per cent of the profit tax. In terms of net revenue, the oblast' is a net loser. Moreover, inflationary trends in costs to enterprises (gas, taxes, customs fees, etc.) reduce companies' profits thus further constraining regional budgets.

speaking about federalism) gives insight into the rationale for and interests behind a particular course of action. The remainder of the paper is devoted to identifying and analysing the political idiom of Putin's federalism, based on the analysis of rhetoric and political action undertaken above. The objective is to elicit more precisely the conceptions which underlie the reform initiatives, and in so doing, attempt to identify some of the risks and benefits, inherent in these changes. The political idiom of federalism under Putin is summed up in three axioms.

First, federalism is about guaranteeing the equality and rights of citizens. For Putin, the reform of the division of powers "is not simply a question of delimitation, but the resolution of problems which affect citizens' rights in the social and economic spheres" (Glikin 2002). Negotiated federalism led to a situation whereby asymmetric policy capacity created differentiated rights and inequality between citizens. The Kozak reforms, by creating a rigorous division of powers and setting funding obligations, create a strong state able to work to protect the rights of citizens, irrespective of their region.

Second, federalism is about symmetry in the federal government's relations with the subjects of the federation, and between the subjects themselves. Symmetry is juxtaposed to the practice of negotiated federalism under Yeltsin and resulting asymmetries, and signifies equality between the federation subjects and a uniform power vertical between the centre and the regions. Under this heading, power-sharing agreements are to be re-examined because of the dissonance such practices engender: for Putin, the system only "aggravates the problem of inequality of the federation subjects in terms of their attitude toward the federal centre and toward each other" (quoted in RFE/RL 2001a). Federation subjects should be differentiated only on an exceptional basis.

Third, federal effectiveness and policy capacity result from a clear division of power and competences. Since federalism, following the previous axioms, is about equality and symmetry between federation subjects, jurisdiction is determined through law. As Putin has said: "I want to emphasise and I think many would agree that we have dragged out the creation of a balanced and effective system, where each level of power knows exactly and to what degree it is responsible" (RFE/RL 2001a). The Kozak reforms flow from this conception and are a first effort at eliminating political negotiation as a means of federal-regional regulation to give precedence to law as a distributor of power and competence. Indeed, it is a manifestation of a new tendency in

federal-regional relations in Russia to, “write everything down to the smallest detail”, as Duma Deputy Vladimir Lysenko writes (quoted in Ryklin 2002).

As mentioned above, the purpose of reform was to consecrate a break with the way federal-regional relations were practiced under Yeltsin. To a certain extent, the centre was successful in its struggle to establish a power vertical and fight separatism in the legal sphere. Only a year after Putin’s accession, Dmitrii Kozak reported that 80 per cent of regional laws checked by the government had been brought into compliance with federal law or were before the courts (RFE/RL 2001b). There has been a steady upward trend in the share of the federal government in tax revenue.<sup>6</sup> Even Tatarstan, which was the toughest nut in terms of inter-budgetary relations, eventually relented (Ovrutskii 2002).<sup>7</sup> Since Putin came to power, all but 14 bilateral treaties have been cancelled (Putin 2002). Markov (Markov 2001) concludes that these changes reflect a shift in priorities: secession, a main concern in the early 1990s addressed by Yeltsin with grants of sovereignty and autonomy to federal units, has now taken a back seat to the problem of state capacity. The vector of federal-regional relations becomes one of inter-budgetary relations, requiring not autonomy but rather a clear and unambiguous division of powers between governments.

Putin’s idiom therefore seems to be based on a vision of federalism which gives precedence to the independence of governments (control, accountability, division of powers), plays down the need to represent regional governments (regional envoys, severe restriction of bilateral treaty process) and is averse to recognizing difference (asymmetry). Can the reform programme, based in part on this idiom, therefore be characterized as risky? In part, the reforms have accomplished what they set out to do: control regional abuses of power and funds, establish a power vertical and legal coherence. Where it is argued that the reforms, and Putin’s conception of federalism, contain risks is in their misapprehension of certain elements of federal government. Putin’s idiom of federalism privileges a formal, legalistic interpretation of federalism, which minimizes the role of inter- and intra-governmental mediation, negotiation, and politics as vectors of federal-regional relations. In this interpretation, the necessity of

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<sup>6</sup> In 2000, revenue distribution between federal and regional governments was 50:50; in 2001, 56:44; and in 2002 it was expected to be 62:38. EWI. (2002c). *Russian Regional Report*. 7:20, 17 June 2002.

<sup>7</sup> In 2000, an agreement was reached between the federal government and the government of Tatarstan whereby Tatarstan would remit taxes to the Federal Treasury, but these funds would be earmarked for federal spending projects within the Republic. The differences are startling. Whereas in 2000 only 15 per cent of taxes collected in Tatarstan were forwarded to the federal treasury, by 2001 this number had reached 32 per cent and 49.3 per cent in 2002.

*independence* of governments in a federal system is overemphasized, and it overlooks the fact that intra-governmental *representation* can play an important integrative role. Most risky, in our opinion, is the change in Putin's idiom of federalism on the question of *recognition* of ethno-national difference.

### *Risky Strategies?*

On the question of representation, McRoberts (1993) sees federal systems as featuring intra-governmental arrangements that seek to promote the representation of regions *within* institutions of the federal government. Interests, therefore, are safeguarded not only through control of separate governments and a strict division of powers but through their processes of intra-governmental representation (Smiley 1971). Thus, communication in a federal state flows between centre and the regions, and between regions. The implementation of the power vertical under Putin has tended to erect barriers to such communication. Federal districts and presidential representatives are a buffer between centre and region. Subordinated to the Presidential Administration, the president's envoys were not mandated to engage in federal-regional diplomacy or interest mediation, but only the implementation of the centre's policies.

Regional leaders objected to their removal from the upper chamber because it would prevent their participation in politics at the centre. In itself, the reform is therefore not problematic. Filling the chamber with professional legislators may increase its efficiency as a forum for intra-governmental representation or interest aggregation, but the fact that many of the council's members are Moscow-based, economic elites calls this into doubt. Moreover, the creation of the State Council may provide the opportunity for regional leaders to influence Moscow: Kozak's *Concept* was severely criticized when it was presented to members of the Council, and their objections forced some changes to the document. As an institution to promote federal-regional communication and joint decision-making, it is consequently only as strong as the leaders' resolve to participate in it. Nevertheless, it is an example of an institution which may promote intra-governmental mediation and representation.

On the question of the independence of government, the Kozak reforms, inspired by a legal-formalistic view of federalism emphasize the need for and benefits of setting down a symmetric and rigorous division of competences. Law cannot be expected to solve all problems: politics too play a key role in adjudicating conflicts and struggles over jurisdiction. As a model of federal-regional relations, Sergei Shakhrai is critical of

the Kozak approach: “dividing up competences in Article 72 into ‘mine’ and ‘yours’ is an impossible task. By thinking that somehow, someone will solve the problems, it can lead to the end of the country. Indeed, independent regions (donors, for instance) will back away from the process” (Tsygankov 2002). The framers of the 1993 constitution attempted to implement a model in which cooperation and intergovernmentalism were to be considered means to an end: “We conceived of the Constitution as a model of cooperative federalism, based on the cooperation of the centre and regions” (Tsygankov 2002).

In a federal polity, “[t]he existence of [a division of powers] places conflict of policy aims in the centre of the picture” (Wiseman 1989: 98-9). Which also signifies that between centre and region, many different conceptions of priorities, orientations, and funding requirements, may coexist or compete. The reforms seek to eliminate conflict by setting an unambiguous division of powers. In so doing, the Kozak reforms confuse means and ends. Institutional change (in this case: strict codification of competences and policy capacity) are presented as a ‘panacea’, whereby the problems of the federation can be solved by setting everything down in law (Lisitsyn 2003). Deputy Economic Development and Trade Minister Vitalii Shipov contends that local self-government reforms are aimed at stopping separatist tendencies in Tatarstan. For him, separatism arose in Tatarstan “as a result of the fact that there was no strict demarcation among federal, regional, and local powers” (RFE/RL 2003a). Here again, Putin’s reforms are presented as an end: separatism arises from incomplete institutional design.

It is in the *Law on Regional Government* that one of the most significant shifts has occurred. Throughout the 1990s, the bilateral treaty process was one of the main pressure valves, a way in which federal-regional practice could remain flexible. The Kozak reforms, with their emphasis on a division of competences and legislative approval of bilateral treaties, severely restrict the ability of the regional leaders to revert to executive federalism as a means of responding to governance challenges. Bilateralism is argued to have been a necessary, but transitory, phenomenon, a ‘coping strategy’ the benefits of which (containing separatism, moderating ethno-nationalist mobilization in republics) have since ebbed (Tompson 2002: 938). In the context of the political struggles of 1993, Shakhrai mentions that many things were left loose in the constitution (namely the relations between the central and regional governments) to be resolved once the political climate would be more relaxed (quoted in Tsygankov 2002).

The “elasticity” of Yeltsin’s approach throughout the 1990s may have helped to avoid crises (Nicholson 2003: 17).

The recognition of difference – by means such as bilateral treaties in the case of Russia – is an important factor in multinational federal systems. Nevertheless, ethnic difference seems to have been completely overlooked in Putin’s reforms. From the very beginning, asymmetrical federalism through bilateral treaties was conceived as a means of regulating ethno-territorial differences, and accommodating republics within the federal system and institutions (Erk and Gagnon 2000; Gagnon and Tully 2001; Hughes 2001b; Kymlicka 2001; Smith 1998). Asymmetry may not be the cause of separatism, however, but rather a reflection of Russia’s ethnic heterogeneity (Furman 2000), and of the fact that different regions may seek to adopt different policies to suit particular social, institutional, historical, etc. conditions. Asymmetry, therefore, becomes an expression of diversity, the recognition of which becomes a salient political issue (Kymlicka 1995; Taylor 1992; Taylor 1995). Indeed, ‘recognition’ can take many forms – asymmetrical policy capacity, differentiated rights, representation within central institutions, etc. We must therefore wonder whether Putin’s reforms continue to provide the tools for such recognition. Leonid Smirnyagin concludes that much of what Putin says and does indicates that he does not favour Russia’s federal structure, or at least does not understand federalism (Smirnyagin 2001).

Negotiated federalism provided Russia’s leaders with much-needed constitutional flexibility to get beyond fundamental disagreement on the nature of the federal covenant in Russia. At the outset, the refusal of Tatarstan and Chechnya to sign the federal treaty and recognize the 1993 constitution outlined a fundamental lack of agreement on constitutional fundamentals. In Chechnya, for a number of reasons, the lack of agreement was unbridgeable (Hughes 2001a). In Tatarstan, the bilateral treaties provided a degree of flexibility. Constitutional differences have not been completely resolved, as the debate continues as to whether federal relations between Moscow and Kazan’ are bottom-up, “treaty-constitutional”, or top-down (Khakimov 1997). Although the bilateral process lacked the transparency that a transition to constitutionalism may have required, it provided some important leeway to federal and regional political leaderships to reach consensus on power sharing. Executive federalism – agreements reached by political elites – was able to bridge differences which a more transparent, parliamentary process might not have been able to resolve. Such practices of negotiated, executive federalism as a means of regulating federal-

regional relations imply certain trade-offs (for instance, full transparency or participatory governance), which must be weighed against the political exigencies of the need to avoid ethno-political conflict and maintain stability (Simeon and Conway 2001). Moreover, executive federalism as a practice emphasizes the importance of politics and process in the regulation of difference. As these exigencies or leaders change, the relative importance of transparency, symmetry, etc. may increase relative to the need to regulate ethno-political difference. This is an aspect which has been neglected by most scholars and observers of contemporary Russian federalism.

Thus far, Putin's reforms have been analysed as the expression of a need for change and for additional stability and certainty in federal-regional relations. Yet, what the reforms overlook, besides the fact that ethnicity is a particularity which many in Russia argue is worthy of accommodation, is that if the legitimacy of the constitution is challenged, attempts to reiterate the division of powers will not bridge the initial legitimacy gap. Recent developments in Chechnya provide a potent example of the nearsightedness of this process. The experience in Chechnya is at odds with federal practice of the 1990s because the differences between Moscow and Grozny ultimately resulted in brutal conflict. As we follow the vicissitudes of federal intervention there, from the 'operation to restore constitutional stability' (1994-1996) via the 'antiterrorism operation' (1999-2003) to the most recent efforts to reclassify the intervention as an affair to 'protect law and constitutional order', the Presidential Administration formed a working group in July 2003 to prepare yet another treaty demarcating the powers between the centre and Chechnya. However, the draft which the President of Chechnya Akhmad Kadyrov released is exactly what the federal government purports it no longer wants to see in its relations with federal subjects. The draft treaty asserts *inter alia* its primacy over federal legislation and Chechnya's sole right to exploit its natural resources (RFE/RL 2003a). Petrov (2003) argues that this demonstrates the "advantages of pragmatism over an excessively rigid approach" and that Moscow can consequently learn from its mistakes. While it is unclear what the final agreement will look like, the challenge to Putin's own idiom of federalism is clear. What will happen, however, if Parliament does not pass the requisite federal laws? What will the knock-on effects of signing such a pact be with other activist republics, such as Tatarstan, which must also renegotiate its agreements? The federal government has been adamant on removing the tools which had hitherto given the federation a degree of flexibility in dealing with republics such as Chechnya. Could we



therefore really expect an agreement with Chechnya to be sunk by the inflexibility of Putin's concept of federalism?

Chechnya is not alone in providing indications that the centre and some republics are speaking at cross-purposes. Tatar President Shaimiev also contends that the fate of each power-sharing agreement should be up to each region to decide and that for Tatarstan, "the agreement is the second most important document, after the constitution" (in RFE/RL 2001a). He complains that while regions had to change their laws to bring them into line with federal legislation, the centre has not brought its own laws into line with the federal constitution. Federal structures in the regions are gaining in size and usurping the independence of the regions. "From this deadlock", Shaimiev stated in June 2003, "there is only one solution – give regions their independence back" (Postnova 2003). Chuvash President Nikolai Fedorov also argues that Putin's reforms are "giving the nationalists and separatists of all stripes new trump cards to stage rallies because the interests of Ingushetia, Tatarstan, Bashkortostan and other regions are allegedly ignored .... This is where the main threat posed by Putin's reforms lies, and the Kremlin underestimates it" (Tropkina 2000).

## **VI. Conclusions**

This article will not be so bold as to assert that Putin's reforms will lead to chaos, or a new 'parade of sovereignties'. It does, however, assert that we need to acknowledge the shift occurring in federal-regional relations in Russia and be conscious of some potential consequences. Codifying competences and assigning funding requirements, in themselves, are not risky proposals. Asymmetric federalism or bilateralism *per se* does not lead to state collapse. The way in which these were practised in Russia may well have been unsustainable and required changes. Although Boris Yeltsin attempted to manage the treaty process, he did so too late and in a way that remained under-implemented. Moreover, throughout the 1990s and up to now, unfunded mandates and inequality have remained a significant problem, which directly impacts the quality of life of citizens. Just as institutions are not cast in stone and adapt to changing circumstances, Russia's federal system may also be evolving to adapt to new requirements. With legislative elections in December 2003, and presidential elections in March 2004, the extent to which Kozak's laws are implemented, and reforms in federative relations continue along similar lines remains to be seen.

This article argued that reform was necessary to stabilize state capacity, ensure laws, the constitution and court decisions were implemented and rationalize inter-budgetary relations. However, we should not lose sight of the political exigencies that gave rise to the practice of negotiated federalism, and significant autonomy to federal units, in the first place. Although such an outcome is far from the reformers' intentions, Putin's reforms, and the Kozak laws in particular, could reopen the can of worms that is asymmetrical federalism in Russia. If this article is right to analyse Putin's reforms as an attempt at equalizing and homogenizing Russia's subjects, there is a risk that the very pressures and centrifugal tendencies which had been successfully regulated by negotiated federalism and bilateralism return to the fore. The next two years will be extremely interesting from this point of view, as the existing treaties will need to be re-examined, and passed by the federal legislature. The question still remains, however, as to what will happen if the Duma refuses to ratify Moscow's treaty with Tatarstan or Chechnya. Alexseev (2001: 105) believes that regionalism and difference are bridgeable, that the continued resilience of the Russian Federation lies in the ability of its institutions to live with diversity and nurture the evolution of a "ground-up evolution of formal and informal institutions that mediate center-periphery grievances and disputes". Perhaps the pragmatism of the 1990s will not be lost as the recent proposals for a treaty with Chechnya illustrate. Nevertheless, we need to heed these words more carefully, as a failure to continue to adopt and adapt institutions to recognize the salience of diversity may turn out to be a risky proposal indeed.

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## Biographical Note

David Cashaback is a doctoral candidate in the Department of Government at the London School of Economics and Political Science, United Kingdom. Educated at the University of Ottawa and York University in Canada, he has published on the role of central agencies in Canadian government, and municipal governance in British Columbia. He currently holds a Commonwealth Scholarship to research federalism and the accommodation of minority nationalism in Tatarstan and Quebec.





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